Native Trust and Land Act 18 of 1936
Bantu Authorities Act 68 of 1951
National States Constitution Act 21 of 1971
(Interim) Constitution of the Republic of South Africa Act 200 of 1993
Restitution of Land Rights Act 22 of 1994
Communal Property Associations Act 28 of 1996
Constitution of the Republic of South Africa, Act 108 of 1996
Traditional Leadership and Governance Framework Act 41 of 2003
Communal Land Rights Act 11 of 2004

CHAPTER 6

RUMOURS OF RIGHTS

Julia Eckert

INTRODUCTION

This volume explores the dynamic by which law changes the perception of situations, problems and conflicts, as well as of the world and oneself within it for those who employ its norms and categories. We ask also how in turn law is transformed by being applied, interpreted and used by people to express their hopes and fears. In this article I attempt to look at these processes through the perspective of the particular properties of rumours. Rumours of rights travel across the globe, spreading legal norms in a particular manner. Attention to rumours of rights opens our view to processes of normative change, adoption and adaptation that are of a more general value for our understanding of law's transformations.

I start with the thesis that, along with commercial and governmental forms of legal export, rumours are one of the principal ways that law is spread. They are, of course, not an alternative to the former but their correlate, and they are thus part of processes of juridification. Upendra Baxi has provided us (in this volume and elsewhere) with the important

I want to thank Franz von Benda-Beckmann and Keebet von Benda-Beckmann for their intellectual and practical support that has made the research on which this article is based possible. I am indebted to the critical questions of the participants of the Law in Context – Berlin Research Network on Legal Culture(s) at the Institute for Advanced Study in Berlin, and the jour fixe of the SFB 700 at the Freie University Berlin, who helped me refine some of my arguments, although I am far from doing justice to their insights. Discussions with the members of the research group Law against the state – Özlem Biner, Brian Donahoe and Christian Strümpell – have given me much inspiration. I want to thank Gesine Koch for her constant support in all practical matters and her skilful finishing of the manuscript.

distinction between the politics *of* human rights and the politics *for* human rights, the former denoting policies to implement human rights, with all of its baggage of political interests and the geographies of global power, and the latter referring to movements for the alleviation of one's own suffering (Baxi 1998).[1] These movements are distinguished by the different impacts they have on the two decisive moments of the travels of law, namely the restructuration of economic or political power relations through legal interventions on the one hand, and processes of normative change on the other hand. Rumours are one way in which the two are connected: in rumours, that which is relevant to the hopes and fears of those engaged in politics *for* (human) rights is glimpsed, extracted, imagined or demanded from the politics *of* (human) rights.

In this article, I am concerned not with the politics *of* human rights, but the glimpses and imaginations of the politics *for* human rights in the rumours of law's possibilities and law's threats. These structure the adoption of new legal norms in a particular manner. Firstly, what is known about law is shaped by the fears and hopes of those who transmit the rumour and those who hear it. These processes of horizontal knowledge transfer thus select legal knowledge in relation to concrete situations, particular perceptions of problems and conflicts that differ from the often discussed top-down processes of legal dissemination. Secondly, because rumours entail uncertainty, they make routine reactions based on habitual normative orientations impossible. As such, they make more evident the potential of genuine action and the situational interpretative moments which are a general feature of normative orientations. Thirdly, rumours entail comparisons. Comparisons, by relying on categories of similarity and difference, have a universalising tendency, a propensity to construct matrices of comparability. The normative effect of the rumour lies thus both in its complex relation to pre-existing norms that influence but do not comprehensively determine the hearing of news, and the universalising tendencies of comparison inherent in it.

A RUMOUR OF A JUST COURT

Gopal Bhai is the president of a slum residents' association in a slum that is located on very precious land in a central suburb of Bombay.[2]

[1] Similarly, in legal fields other than human rights, we see various movements that might succinctly be distinguished as the politics of law (and rights) and the politics for law (and rights).

[2] Names of persons and places have been changed.

He was striving to have his slum included in the Slum Rehabilitation Scheme in order to safeguard the slum dwellers' residence 'rights' to this very land.[3] This scheme promised slum residents the construction of apartment blocks for their use on the land where they were living. In exchange, construction companies, or what in Bombay are called 'builders', were granted the right to develop the rest of the land commercially. The scheme had once been introduced by the Shiv Sena party, and is comparable to other schemes in other Indian cities that attempt to deal with 'the slum problem' (cf. Baviskar, this volume; Fernandes 2006: 137; Rao 2010). Gopal Bhai had at one point in the early 1990s joined the Shiv Sena party.[4] He had sought security for his colony and had delivered the votes of his area to Shiv Sena to guarantee safety, particularly of its Muslim residents, during the riots of 1993 in which the Shiv Sena had been centrally involved. Now he hoped the Shiv Sena would broker a deal with the builder. However, at some point, Gopal Bhai realised that he was being cheated by the builder, who was not planning to build apartments for the slum dwellers on the land where they had lived for so long and worked so hard to turn from a swamp into habitable land, but somewhere far away. This had regularly happened to other slum dwellers who had been relocated to far-away places, disrupting their economic networks, forcing them to travel for long hours between their new homes and their places of work and burdening them with the cost of travel (cf. Rao 2010). Gopal Bhai was desperate to save his slum from this fate – a fate that would probably have terminated his prospects as the president of the colony's residents' association as well. When he asked the Shiv Sena to employ its usual forms of pressure, this time against the fraudulent builder, he was forced to realise that the party was not really interested in helping him because it could buy more votes with the builder's money than would be lost by abandoning Gopal Bhai and his slum.

When Gopal Bhai realised this he said to me:

> Help me. You must know a lawyer. We need law. We want to use law. But we do not know enough. We need information. The powerful break the

[3] The Slum Rehabilitation Scheme made available public land on which slums had been established to commercial building companies. Investors were obliged to build housing (blocks of 225-square-foot flats) for the slum dwellers, and could develop the rest of the land commercially. Problems arose because the mixed-use characteristic of slums was not taken into account in the planning of the apartment blocks, so there was no space for workshops and other non-residential facilities.

[4] The Shiv Sena is a chauvinist regional party founded in the late 1960s that took on militant Hindu-nationalist positions in the 1980s (Eckert 2003).

> law. We also have rights in law. Law makes us illegal, but the business that others make from us being illegal is even more illegal. We want to use the law against them. But we always lose out because we do not know the precise laws which give us the right, or tell us about whether the harassment is legal or illegal. We have made this land liveable. Without us, it would be a swamp. We have lived here for forty years. This is our land. The state (*sarkar*) has to give us our house.

So I brought a young lawyer to him who was active in housing and displacement issues. When he met Gopal Bhai the lawyer started telling him about the legal aid NGO he was working for, but after only a few sentences Gopal Bhai jumped up in his small house and screamed at the young lawyer and at me: 'I do not want any movement (*andolan*)! I have had enough of movements. I can't stand NGOs. I want law.'

The lawyer fled, and Gopal Bhai explained to me that movements were only for communism and that they only exploited the poor for their own political ends. He knew that there was a new court especially for poor people like him, and that this new court was using law for the poor, and the lawyers and judges there, unlike in all other courts he had encountered, did not ask for money. He had heard about this court from his neighbours. A story was making the rounds, namely that of a young Muslim man who had gone to this court because the police had falsely arrested him and beaten him up. This young Muslim had been awarded 15,000 rupees in damages – an unbelievable sum to Gopal Bhai, and an unbelievable event: that a young Muslim man living in the slums could be victorious over a policeman in court. Gopal Bhai said, 'He is also poor. He lives here too, but law was on his side.'

This story suggested to Gopal Bhai that law might be the way to go to get what he considered his and his fellow slum dwellers' rights: for all to live on the land that they had laboured to make liveable, a right he felt the residents had earned by virtue of the work they had put into turning this land from a swamp into land, by improving it over the years and 'making a living' in an extensive sense. His sense of entitlement and rights went beyond the labour that they had put into the area; it also came from the fact that they had been able to exist in an inhospitable city, depending only on themselves to survive, and from a sense that the poor contributed to the city in ways that were not acknowledged.

Law here appeared as a site of hope, of a just world in which the poor would not lose out – even though they might remain poor. It offered the possibility of affirming and realising existing values rather than overthrowing them, as Gopal Bhai assumed 'movements' – 'communism' and the like – wanted to do. His was not a fundamental critique of the political system he was living in; in fact, he objected to such critiques as he saw them as making for 'conflict'. In his experience, conflict brought only problems for people like him. They were the ones used by others to battle, as he knew from his years in the Shiv Sena, and they were the ones criminalised and punished afterwards for battling.

Law for him thus provided an alternative to collective action. It suggested peace rather than struggle, neutrality rather than opposition. It promised an avenue to something that to him was out there somewhere, namely (social) justice. Gopal Bhai and other slum dwellers have a clear idea of what they consider social justice, and also very concrete explanations of how social justice is subverted. Such explanations vary according to the specific case of injustice discussed and the specific social position of the teller. It might be the corruption of bureaucrats or the police; it might be the interests of the politically powerful; it might be a local rival and his connections; it might be 'the rich', or any group construed as 'the others' – whoever that might be in a particular instance. Rarely is it 'the system' as such, or the legal order of India that is held responsible for the plight of the poor and the injustice that they experience every day. In fact, a diffuse idea of law (and often of democracy) is highly valued, and it is the concrete persons charged with their implementation that are accused of preventing its realisation.

This idea of (social) justice residing in law (as well as the belief in democracy) needs to be explored, as it runs counter to the experiences that people like Gopal Bhai have every day. Gopal Bhai's faith in law arose despite his awareness of all the intricate ways in which law can be used in '(false) allegations'. In various local skirmishes he had been accused of all sorts of things – rape, murder, cheating, assault, fraud – and had used the weapon of (more or less false) allegations himself. He had been arrested on these allegations, beaten up by the police and set free after proffering a bribe. He had been involved in court cases that dragged on for years and were inconclusive in the end, but which had done harm simply by dragging on.

Moreover, Gopal Bhai was clearly aware of 'unjust laws', those that operated to the detriment of people like him, the laws 'that make us illegal'.[5] He distinguished between unjust laws and just laws, and between

[5] Poverty in the city is always accompanied by illegality. There are of course acknowledgements of legal status of the urban poor: ration cards and other forms of identity cards, voter registration lists, etc. Nonetheless, those living in the urban slums are all illegal in one or the other aspect of their circumstances. Their very residence in a certain place may technically be an

'the law' as a normative order of potential social justice and its subversion in the scheming and fighting in the slums. Nevertheless, the 'law' that he was referring to here was a site of hope, an idea of justice.

Gopal Bhai knew of this law-as-hope from a rumour. It was the story of the young Muslim man that he had heard, that 'someone' had told him.[6] That story gave him a new perspective on law and the courts, one that went against his previous experiences of battling local rivals by means of complaints and allegations at the police station. It was a perspective that resonated so much with his hopes, as well as with his beliefs as to how these hopes might be fulfilled, that it was able to overcome his experience of law to the contrary.

Gopal Bhai is not alone in this. Rumours are rife, so to speak, and law is much discussed in the slums (cf. Eckert 2006). Of course, law is mostly known by any slum dweller as an instrument of harassment by the police and the municipality. It is known to 'make us illegal' as Gopal Bhai says, and the magistrate courts are crowded with people, particularly those from the poorer sections of society, charged with various misdemeanours. Law appears as a weapon easily used by rivals and adversaries to pull one into the ambit of police attention. Rumours of law, therefore, are not always rumours of hope, but often of fear.

Despite these experiences, many turn to law to address their hopes and demands. Indians have a long history of addressing judicial institutions with their issues. For example, they liberally used the colonial courts from the moment they were set up (Galanter 1997: 19). Earlier discussions of the use of law in India have attributed this either to the litigiousness of Indians (e.g. Cohn 1959) or to the hegemonic sway of élite ideas (e.g. Chatterjee 2004).[7] However, since the advance of public interest litigation in the early 1980s propelled law to the forefront as an instrument of moral politics, filing a case is often also a matter of trying

'encroachment' on public land and an illegal use of space. The height of their house, its plumbing or the electrical connection may not meet specifications; the product of their labour or the conditions of its production, or any other vital issue connected to their livelihoods may contravene the law. If they beg, they violate the law against begging. There are no titles to land, building regulations and environmental rules are violated, special zones of living, working and engaging in trade may not be observed; in many cases they do not hold licences for their various trades, and many labour laws are violated in the workshops of the slums. Thus, for the urban poor, the most common experience of law is that of the many ways in which their forms of living and labouring are illegalised.

[6] Veena Das relates a similar currency of rumours in the slums of Noida, the role of the everyday occurrence of 'someone' having said something. See Das 2011: 330.

[7] Moog has refuted the alleged litigiousness of Indians (Moog 1993; cf. Wollschläger 1998).

to establish a specific morality of rights. Cases lodged in the various judicial institutions, whether it be the district courts, the high courts or the newly founded human rights commissions, express an understanding of citizens' rights and the expectations of a specific notion of governmental behaviour and governing norms – even if these are diverse and highly contested even among claimants (cf. Baviskar, this volume). This has been particularly true since the establishment of human rights commissions in India at the national level and in each state. From April 2007 to March 2008, the National Human Rights Commission received 98,332 complaints (NHRC 2008: 178). It had received similar numbers of complaints in preceding years. In the first months after the Human Rights Commission of Maharashtra was established in March 2001, it received 120 complaints a day (many of which concerned issues in which the commission was not competent).[8] Complainants addressed this new forum in the hope of being heard and of escaping the networks of patronage and the labyrinth of connections. Claims before the various institutions could thus be seen as an attempt to establish a specific reading of law.

RUMOURS AND HOPES

We need to pay attention to rumour as a mode of the spread of law. The spread of law and legal knowledge via rumours will open our view to interpretative processes which are shaped not only by existing legal concepts, but even more so by hopes and fears. They thus tell us something about normative change among those who put their hopes in law, as well as about the *jurisgenesis* (Cover 1992: 103) that begins in these movements.

Rumours are unauthenticated news whose truth is uncertain and whose source can (most often) not be determined.[9] The content of a rumour often changes in the course of its spread (Scott 1990: 145;

[8] Most complaints concerned harassment by the police. There were also many complaints about administrative failures, particularly in relation to pension rights. Many of these complaints were turned away because the commission was not competent in the matter in question. Discussions with claimants who had been turned away in 2001–2003 made it clear that their failure did not diminish their confidence in the law, but merely in the particular reading of their case by the specific judge involved.

[9] The functionalist strand of literature focusing on the social functions of rumour and gossip of affirming norms and thereby reinforcing community, in short, of social control, as discussed by Gluckman (1963), is not of concern here. Closer to the questions raised here are those authors who see rumours as a form of communication that has a particular relationship to authority, as suggested by Jean-Noel Kapferer (1990: 14).

Zitelmann 2000). One part of this transformation is the unsystematic selection of the content of the news, that is, the telling of the rumour according to the relevance structure of the teller and the 'hearing' of a rumour according to the relevance structure of the hearer. The other part is the creative interpretation of the news, the meaning making (and its normative dimension) that is particularly open in the case of rumours (Kirsch 2002: 70; Steward and Strathern 2004: 30). Rumours, more than other kinds of knowledge and because of their particular uncertainty, are strongly shaped by fears and hopes, and thus on the one hand by norms of what should or could be, and on the other hand by social constructions of danger and threat. Scott writes, 'as rumor travels it is altered in a fashion that brings it more closely into line with the hopes, fears and worldview of those who hear it and retell it' (Scott 1990: 145). Both fears and hopes relate to a situation and the ideas about the possibilities and threats inherent in it, as well as to existing norms of what ought to be.

Because uncertainty is part of the particular character of rumoured knowledge, it brings forth the open-endedness of situations in terms of the right course of action (*Handlungsoffenheit*). The pressures to 'decide' or choose among possible alternative ways of acting forces reflection on such alternative courses of actions. They throw open to questioning self-evident forms of reactions and often entail the re-evaluation of certain types of reactions in terms of norms, values and ends. Rumours cannot be responded to by routines; they demand the reflection of alternatives of acting.

At the same time rumours rely on *comparisons*: what happened there could happen here, because in some relevant manner the situations are the same. This points to a similarity between law and rumour: with law as well as with rumour people identify similarities and differences and isolate out certain factors in order to make a situation comparable. How the possibility of comparison is established in a situation and what is deemed comparable is telling. Gopal Bhai felt that it was the shared experience of living in a slum and of poverty that made the situation comparable: 'He also lives here, he is also poor'. Those were the factors that spoke against the system working for them and made the rumours of law's possibilities, evident in this case, so compelling.

Of course, not all rumours tell of possibilities. Many are about the futility of one's own efforts and the overpowering might of the opponent. My point here is that no matter whether rumours encourage or discourage, the comparisons between situations and between subject

positions that they rely upon are a form of horizontal knowledge transfer in which norms are re-evaluated and opened up to include new possibilities in terms of acting. They also provide us with glimpses of what Nigel Rapport has called 'anyone', 'an actor with an identity over and above his or her membership in social groupings and cultural traditions' (Rapport 2010: 84), in that they highlight the moments of evaluation of one's own possibilities, of alternatives of action, of reflective interpretation.[10]

Rumours are most often discussed with regard to their role in heightening collective fears (e.g. Das 1990), in triggering frenzies (e.g. Zitelmann 1998) or in exacerbating social tensions (e.g. Elwert 1991; Subramaniam 1999; Spencer 2000). Their communicative and expressive character is analysed most often with regard to fear, uncertainty and insecurity (e.g. Das 1990; Scheper-Hughes 1992).[11] The other side of rumours, that of hope, is, however, rarely discussed, although here too rumours seem to play an interesting role. People act on rumours of possibilities, of opportunities; many a strategy, many a plan or endeavour is motivated by rumours of possibilities. Indeed, many processes that shape globalisation seem to rest on such rumoured notions: financial investments, economic strategies, migratory tactics about routes to safety and well-being (e.g. Harney 2006) and other such plans for the future. They are in part informed by seemingly sound assessments of market trends or shifting border policies, and they are motivated by speculation or risk calculation. To a large degree these are, however, based precisely on rumours of specific opportunities and their timing, unauthenticated news of possibilities.[12]

What can this attention to the rumours of rights tell us about the diffusion of law? Three aspects seem important to this case. The first one is the attention to processes of horizontal knowledge transfer that occur according to dynamics and selections that differ from the often discussed top-down processes of legal dissemination. The second one is

[10] I do not share Rapport's sweeping dismissal of the sociality of subjectivities and his (possibly strategically overstated) criticism of 'the Wittgensteinians'.

[11] Stuart Kirsch has examined the relation between the expression of collective fears in rumours and their appropriation and manipulation by the Indonesian state, which further escalated state terror (Kirsch 2002).

[12] There are, of course, other, more directed and regulated forms of the global transfer of (legal) knowledge, such as (legal) educational programmes, cooperations, the institutionalisation of standards and indicators, the formation of epistemic communities, travelling models and others. Rumour as a mode of the dissemination of knowledge particularly pertinent to processes of globalisation has not been examined much. Rights are yet one more of these rumoured potentials; in some ways, the global rights discourse could be called a rumour in itself.

the processual and situational nature of normative interpretations that is made apparent by observing rumours of rights. This follows the 'translation' of norms far beyond the professional translators that Levitt and Merry (2009) have described and thereby pays attention also to the interpretative processes that occur among those who are subjects of rumoured possibilities and who act on them. The third aspect is hence the normative effect of the rumour, its complex relation to pre-existing norms and the universalising tendencies of comparison inherent in the rumour. Attention to rumours of rights, to the stories about law that circulate, opens our analysis to include questions of how hopes and possibilities are perceived, how comparisons propel normative change and how particular interpretations affect legal norms when acted upon.

HORIZONTAL KNOWLEDGE TRANSFERS ABOUT LAW

In discussions about the spread of law or knowledge about legal norms, we most often examine the transmitters of law and legal knowledge: law firms (e.g. Garth and Dezalay 1996), NGOs (e.g. Keck and Sikkink 1998; Merry 2006; Levitt and Merry 2009), or international organisations (e.g. Li 2009) and such judicial institutions as the International Criminal Court (e.g. Anders, this volume; Clarke 2010). Analyses thus focus on the ways these organisations select, interpret and disseminate law; on their motives and aims; on the networks they operate within and the power relations that shape these networks; and their relation to specific target groups or audiences. These are fundamental questions for our understanding of the operation of law, or, to put it in Upendra Baxi's terms, of the politics *of* human rights. They are particularly pertinent considering the enormous economic and political interests that are involved. They do, however, provide little insight into other processes in which law, or ideas of law, travel. This forecloses a differentiated understanding of normative change that is at the centre of our understanding of the social significance of law. It possibly also forecloses insights into the dynamics between the politics of rights and the politics for rights, and the effects that they have on each other.

Attention to processes of horizontal knowledge transfer, especially in such vague forms as rumours, opens our view to what people hope and what they fear, what means they trust to approach their hopes, what ways of action they deem possible. This is because in the spread of rumours selection happens at every stage: what is transmitted and what is heard depends on what is deemed important either for hopes or for fears. Hence, such processes of horizontal knowledge transfers select according to different criteria than export-oriented law firms, governmental programmes or law-related NGOs with a particular mission and agenda. 'Selection', interpretation and hearing are structured by fears and hopes, and these are at most marginally shaped by the legal concepts that they might then adopt to name their intention. Thus, in paying attention to rumour as a form of horizontal transfer of knowledge about law and rights, we can gain insights into the ways that fears and hopes shape the interpretation, the reach and the adoption of particular understandings of rights and law.

It is precisely the shaping of hopes and needs into claims that is often critically examined when looking at processes of juridification. Legal anthropologists have often speculated on the degree to which so-called universal norms are inadequate to articulate the experiences and ideas of those whom they are meant to protect. They have shown how these experiences and ideas are transformed when reformulated according to legal categories (Felstiner *et al.* 1980/81); how the perception of a situation and of oneself is determined by the demands of legal reasoning (Merry 1990); and how an individualistic notion of the person underlies these norms and is incapable of representing alternative ideas of personhood (Collier *et al.* 1995; Strathern 2004). We have many examples of how legal concepts have transformed notions of 'community' (e.g. James 2006) and the perception of what it means to be indigenous (e.g. Donahoe *et al.* 2008), or to be a woman (e.g. Merry 2003) or a 'victim'. Juridification thus is not only a process of the colonisation of the life-world in the sense of Habermas; it creates a new world in its own image and according to (Western) law's assumptions about social organisation.

However important it is to scrutinise such transformative effects of law, it seems only of limited analytical value to stop at the deconstructions of normative imperialism. Such deconstructive perspectives seduce us to think in dichotomies about the travels of law: the dichotomy of modern or Western law and autochthonous legal orders; the dichotomy of hegemony and authenticity, of domination and resistance; that of individual rights and the sociality of being; or that between homogenisation and plurality; and, last but not least, that between law and politics (cf. Zenker in this volume). These dichotomies each detract from a processual approach to normative change and legal travels; they foreclose an analysis of the particular intertwining and merging of normative orders that Sally Merry (1988) and Franz von Benda-Beckmann (2002) have

called for and that Fitzpatrick had earlier pointed to with his notion of 'combined law' (1983: 168).

Consider another case: Amita and Vikram got married in 2001. Both lived with their families in Dharavi. Amita was eighteen at the time and Vikram nineteen. Their parents had arranged the marriage, dowry had been paid in the form of pots and other kitchen utensils, and they conducted the wedding according to Hindu ritual. In March 2002 Vikram wanted to divorce. He said that Amita was unfit for marriage because of mental illness and that the marriage had never been consummated. Amita's mother, Tara, agreed to the divorce (Amita's father had long disappeared). Tara feared the worst: that her daughter might be physically harmed. She knew of so many cases in which girls had been severely ill-treated by their in-laws. The disagreement thus was not about whether or not to divorce, but about the rights over the dowry, especially Amita's *stridhan*.[13] Tara insisted on its return. Tara, always speaking for Amita, who never spoke herself because she was evidently in a state of severe depression, claimed that Amita's mental instability was due to the way Vikram had treated her during marriage, in particular his adultery. Vikram refused to return the dowry, claiming that he had been tricked into marrying a mentally ill woman. In this he felt affirmed by the counsel of the Jamaat, the caste council, but they were not willing to make a clear statement on the matter. To me they said that they could only help where the parties involved were willing to come to an amicable conclusion. They had counselled the two young people to mend their differences and stay together.

Vikram, however, turned to the local *Shakha Pramukh* of the Shiv Sena party, who threatened to drive Amita's family out of Dharavi.[14] Tara was very afraid of the *Shakha Pramukh*, so she went to a local (Muslim-led) NGO to find help. In response, the NGO mobilised its female clients to protest and threatened to file a case of 'dowry harassment' against Vikram, a threat that would inevitably lead to police investigations. Although many 'dowry harassment' and 'dowry death' cases are not solved and might not even be taken seriously by the police, who often consider deaths related to dowry disputes to be matters of domestic accidents, a police investigation means being brought to the attention of the police and made vulnerable to police harassment, and is thus a serious threat.

However, a few weeks after the NGO had confronted the *Shakha Pramukh*, Amita's mother, in a meeting of the parties now involved in the case, declared that she now wanted not only the pots and pans, but also 135,000 rupees for 'maintenance'. When all others responded in surprise, she declared that she had heard that women were entitled by state law to maintenance after divorce.[15]

Another rumour was behind this sudden demand and her sudden increase in self-confidence, indeed one that was based on a misunderstanding. Tara told me that she had discussed the fate of her daughter with some of the women in her neighbourhood. At first she discussed it only grudgingly – she had wanted to keep the affair hushed up because she was afraid it would jeopardise the prospects of a second marriage for her daughter. But the case was making the rounds anyway, partly because Vikram's family were also going around telling their version of the story so as to establish it as fact. So one day, Tara said, someone had told her that the Indian Supreme Court – an entity well-known and equally mysterious in the slums – had awarded a Muslim woman a large settlement that was to be paid to her by her husband, who had divorced her. If a Muslim woman could get this, then surely it was also Amita's right. Everyone knew that Muslim women had at least as hard a lot as themselves.

I assumed then and still assume today (but cannot ascertain it) that this was the story of Shah Bano, the case that achieved notoriety because of the severe political upheavals that followed it. In the end, Rajiv Gandhi overturned the court's judgement granting alimony to Shah Bano when the Muslim Personal Law Board protested that the judgement was an infringement on minority rights and their legal autonomy. Shah Bano not only lost her alimony rights, but her case also came to symbolise the conservative politics of some representatives of Indian Muslims and

[13] *Stridhan* is the part of a woman's property which she can sell, give away, mortgage, lease or exchange. Besides the jewellery, clothes and bedding given at marriage, *stridhan* also includes the gifts to the woman before, during and after marriage. It includes property inherited by the woman from her family or husband's family; property received by her under a compromise or in lieu of maintenance; and property bought using proceeds from *stridhan*. Section 27 of the Hindu Marriage Act of 1955 stipulates that refusal to return *stridhan* upon divorce makes the husband liable to prosecution.

[14] *Shakha Pramukhs* are the heads of the local branches (*Shakha*) or party offices of the Shiv Sena (the RSS also uses the term). *Shakha Pramukhs* organise the activities and finances of the *Shakhas* with a relatively high degree of autonomy from the movement's leadership. Like the local big men of other political parties or gangs, they take on the role of adjudicator.

[15] I myself was so surprised by Tara's sudden confidence that I never asked how she came up with this precise sum, a sum that was well-nigh impossible for Vikram to pay as he earned only about 1,000 rupees per month.

their claims for minority rights, which in turn served to justify Hindu nationalists in their diatribes against Islam and the Muslims of India.

None of this Amita's mother knew. She did not know the name of the Muslim woman she had heard about and did not know who exactly had first mentioned her. None of her neighbours knew of Shah Bano, but all started talking about the right to maintenance and that this legendary site that was the Supreme Court had given a Muslim woman a lot of money and had taken this money from her estranged husband. Tara also wanted to write to this court (or rather, to have someone write a letter to the court for her) and tell the story of her daughter to whom such injustice had been done. The other 'rumour' – this one widespread and based in fact, but 'known' in the vague ways that rumours are – was that anyone can write to the Supreme Court and tell of their plight.

Tara never blamed her daughter for the failure of her marriage. She never told her to go back to her husband, and she once said that she was glad that her own husband had disappeared because he would not have taken Amita back. She feared for the safety of her daughter if she remained with her in-laws. In the course of talking with her neighbours about the fate of Amita, her position changed from one of trying to save her daughter from harm but being at the same time ashamed of the affair, to one where she assertively augmented her protective feelings with certain demands. She interpreted the legal rumour that she had heard through the filter of her understanding of Amita's situation: her husband had been a bad husband and had caused the current state of illness in Amita. He was responsible for the failure of the marriage and he was guilty of destroying her daughter's mental well-being. The money he was supposed to give was not only meant to ensure a livelihood for her daughter, but also as a punishment and an attribution of guilt.

Here again the rumour of a law, of a right, provided the frame in which certain interpretations of a situation could be named. Many factors shaped Tara's understanding. For one, it was her fear for her daughter, based on the stories (rumours, witnessing) of other daughters-in-law that had been harmed. These made her set aside all notions of propriety – of wifely duty or Hindu marriage law – that might have played a role.

This interpretation seemed to have emerged somewhat collectively, in the talk and gossip with her neighbours that Tara had initially been so worried about. The course of collective gossiping could have taken another turn: it could have resulted in the condemnation of Amita and her mental instability, or of Tara and her misguided marriage arrangement for her daughter. This version was probably circulating at the same

time, at least among Vikram's supporters. The precise factors that led to the rumour of the right to maintenance overriding all other aspects of the story cannot be ascertained. Possibly Vikram's affair with another woman was detrimental to his credibility; maybe it was simply friendship and sympathy with Tara by some vocal local women who took the lead in defining the situation – I do not know. But this rumour grew into one which rather suddenly sidelined all other versions of this divorce and had Tara's female neighbours rally in solidarity. 'Maintenance' seemed to become the name for hopes and feelings that had found none before.

This often incidental, eclectic selection, specific to horizontal knowledge transfer and bound up with interests, aims and hopes different from those that motivate top-down processes of legal dissemination, needs to be examined with regard to the impact on other arenas of legal interpretation. It is the ground of the politics *for* human rights that Upendra Baxi (in this volume) mentions as an important source of the development of human rights. Of course, it is here not even quite politics: in particular, Gopal Bhai's aversion to social movements seems to confirm all fears that legal rights have an individualising tendency. However, his understanding of his rights was not individualistic; it related to collective experiences, collective labour and community. Even more evident was this social nature in Tara's and Amita's case: the rumour of legally prescribed maintenance turned into the defining narrative in the conflict involving Tara, Vikram's family and the *Shakha Pramukh* when her female neighbours adopted it with her, their talk reinforcing its urgency and primacy and elevating it above any other considerations pertinent to the case according to the different normative orders 'present' in the situation.

INTERPRETATION AND ITERATIONS

For such adoptions of new norms that are inspired by globally circulating legal concepts the term 'vernacularisation' has sometimes been used in legal anthropology (Merry 2006; Michelutti 2007; Levitt and Merry 2009). Vernacularisation means the adaptation of globally circulating norms, institutions or simply terms to locally valid normative languages and institutions. A 'universal' norm is translated into 'local culture', so to say. Theories of vernacularisation assume the meeting of two (or more) distinct normative systems. New and alien norms are adopted according to existing normative models into which people are socialised and within which they think and feel. Such adoptions and adaptations appear as a

result of the fact that people live within one distinct system; theories of vernacularisation assume (often implicitly) that people are socialised into specific norms that not only shape but determine their perception of the world. Norms are shared by members of certain groups who are defined by such shared norms and are presumed to be normatively integrated and rather homogeneous. We can distinguish between those positions that consider all 'cultures' to be homogeneous in this sense, i.e. as relying on shared norms, and those who attest such high degrees of normative homogeneity particularly to non-Western, so-called traditional societies which are assumed to be less differentiated. These perspectives have to assume a degree of cultural determinism that binds 'members' of a norm group to their particular norms in a fundamental way of perceiving the world. In these perspectives, law, normativity and social action fall into one. They do not reflect the heterogeneity of norm orientations within those groups described as normative 'units', and they often do not assess the social processes by which certain norms gain dominance within particular social relations, or by which normative homogeneity or consensus is produced. The negotiations over norms that are inherent in all normative orders are obfuscated by the focus on the encounter between two apparently alien normative systems.

Of course, it would not be justified to employ instead a purely voluntaristic notion of normative orientation, or to speak of entirely situational and rational norm orientations (as might be suggested by some formulations of 'forum shopping'). There are limits to interpretation that lie in the norm itself, but also in pre-existing norms that shape people's interpretations of norms, or the 'doxa' in Bourdieu's sense (1977). A practice-oriented perspective points to the dynamic between normative or habitual orientation which shapes the understanding of a situation, and the open-endedness of action (Bourdieu 1977: 225) that is possible because of the singularity of each situation. This implies that every normative orientation is to some degree open to new interpretations, and that such interpretations are inherent in the application of a norm in a specific singular situation. Norms are transformed in iterations. Derrida's notion of iteration suggests that any use (in our case: of a norm) is also an interpretation and thus a transformation (Derrida 1991: 90). However, contrary to theories of vernacularisation and others that consider processes of normative hybridisation, this iterative transformation does not adapt a norm to an existing normative order. In other words, it is not a matter of mixing two distinct systems; rather it adapts a norm to a concrete situation, the interpretation of which

by the person who acts is of course also shaped by prevailing normative orientations. Any application of a norm to concrete circumstances thus means interpretation. At the level of individual interactions we thus come closer to the openness and indeterminacy in terms of action that people face even within the limitations set by habitual normative orientations – an openness or indeterminacy that is reinforced by the uncertainty of rumour.

It is this interpretative act of Tara and Gopal Bhai that is of interest here because it points us to an alternative perception of normative orientation and its transformations. These interpretations are transmitted in rumours of rights. They stand in an ambivalent relation to other channels of the dissemination of legal knowledge, exaggerating messages of hope, rejecting them as unbelievable, suspecting them of unreliability – all depending on the circumstances of the hearer and the issues at stake. In the case of Tara's norm adoption we see two processes of iteration: first, Tara introduces 'guilt' and responsibility into the negotiation of the divorce of her daughter's Hindu marriage; then she comes to apply a notion of 'women's rights' to the situation, thus introducing an entirely novel category into the interpretation of the social relations at issue in the case. In many ways the two norms that she applies do not fit together: Tara was never opposed to dowry as such, never considered its illegality in Indian law, and never saw women's rights violated or denigrated thereby. For her it was the interpretation of Hindu law that was faulty and that she wanted corrected by her pointing to the husband's 'guilt' in making her daughter ill and unsuitable for marriage. Thus she did not break with the religious norms that had guided her in arranging the marriage of her daughter, but wanted them to be interpreted in a new way, a way that was to her the correct way under the specific circumstances. This she battled for by drawing on norms provided by another normative system. The distinction between the two, however, did not matter and was not even evident to her. This points us to the possibilities that all legally plural situations entail, namely that norms inform each other and are in the process often synthesised, blurring seemingly fixed boundaries between different normative orders.

CONSTELLATIONS AND FIGURATIONS

Tara's adopting of the women's rights notion of maintenance could be said to be a classic case of 'forum shopping', a case of her choosing

the legal forum and the normative order most suitable to her interests. However, in a perspective of 'forum shopping' we would not be able to see how these 'interests' emerged and thus her opting for one rather than another normative order could not be explained. After all, her 'interests' might have been to keep her daughter married – and avoid the burden of having to marry her off again or have an unmarried daughter. The notion of 'interests' is highly under-complex in this regard: the transition of Tara from her first role as a mother being relieved of her duty for her daughter upon marriage, to one worried for the safety of her daughter, to one adopting the category 'woman' as grounds for rights exemplifies the various possible 'interests' in conflict here, and the shift in roles that Tara underwent.

Moreover, observation of the 'act' of forum shopping needs to be complemented with the analysis of the possibilities of forum shopping, i.e. the unequal opportunities to choose the forum most beneficial to one's interests (once they have crystallised) and how such opportunities are structured. This points us to the constellations within which both 'interests' and roles, as well as opportunities for choice, are constituted. In Tara's case it was the empathy of her female neighbours, the precise reason of which cannot be known. It was also the fact that when faced with the wrath of the local women, the *Shakha Pramukh* lost interest in the case. For him, there was not much to gain from it, and more to lose, especially as he suddenly found himself in opposition to the women of his own party, members of the Mahila Aghadi, who (partly in competition with the Muslim-led NGO that had taken Tara's side) pleaded strongly for the maintenance payment. They presented this as the pro-woman position of Hinduism, although they had in many cases of marital conflicts counselled for adherence to traditional family roles. Their situational interpretation of what is Hindu tradition points us again to the frame that different normative orders provide for each other, either as a source of further reasoning and inspiration, or, as in this instance, as a bogey against which one can positively distinguish oneself. It also points us to the political constellations that were decisive in determining the conclusion of the case: the *Shakha Pramukh* withdrew because in his 'game', namely democratic competition, he had nothing to gain from siding with the wrong party. Norms did not play a part in his calculation.

Vikram, who suddenly stood alone with his version of the story, grudgingly agreed to return the *stridhan* and even to pay the maintenance sum of 135,000 rupees, a sum that he needed ten years to earn according to his own calculation.[16] The NGO refrained from accusing him of 'dowry harassment', and Tara did not have a letter written to the Supreme Court. We can only speculate on how these results feed into the rumour mill and breathe life into further iterations.

These are the multi-facetted relational processes at the core of normative change: the normative comparisons that are made, the linkages to normative publics that are sought – and which of these can successfully induce solidarity. Peter Fitzpatrick once pointed towards these relational processes with his attention to the historical struggles in which institutions were shaped by the interactions between various actors (Fitzpatrick 1983).[17] These processes can perhaps best be captured with Elias's concept of 'figuration' (1978), webs of (local and global) interdependencies. In the case discussed here, the relationship between Tara and Vikram was shaped by many strands of interdependence. It was, for example, shaped by the competition between the NGO and the *Shakha Pramukh*. That competition was in itself shaped by their differing dependence on the support of people, i.e. their different embeddedness in the realm of democratic politics. The particular ways in which Indian democracy works determined the behavioural logic of the *Shakha Pramukh*. It also propelled the discourse of women's rights to a certain prominence in a context in which chauvinist movements such as the Shiv Sena use the discourse of women's rights to distinguish themselves from their 'dangerous other', namely Muslims and Islam. Hence, the currency of women's rights was constituted by various movements within what could be called a global public in a historical moment in which Islam is perceived as most hostile to women's rights and the global security discourse legitimates itself also by claiming to protect women. (Of course, this line of justification in itself rests on the very currency of women's rights that had been struggled for by diverse women's movements across the globe.)

These figurations are all constituted by the often contradictory efforts to be heard, to distinguish oneself against another, to gain dominance and to forge alliances. They are also shaped by the means by which such dependencies and alliances are sustained through rules of majorities, brute force, money, a common enemy, law or a combination of the above.

[16] I have no information on whether Vikram even started to pay this sum. It seems very unlikely that, given his own meagre income, he would ever be able to comply with this demand.

[17] Fitzpatrick termed the outcome of such interactions 'combined law' (1983: 168), a term possibly slightly undermining his valuable insight that at issue were not simply combinations or hybrids, but institutions shaped in particular historical struggles.

FAILURE AND THE FUTURE

For Gopal Bhai, law had its limits; it did not prove as fertile with possibilities as it did for Tara. Gopal Bhai went to the Human Rights Commission of Maharashtra to present his case. The judge actually heard him, and in a somewhat strange twist of procedure told him at once that this was a case for Article 21 of the Indian Constitution, the right to life, but that Gopal Bhai's claim was no matter for the Human Rights Commission because no state agency was involved in either commission or omission. He sent Gopal Bhai away and recommended that he take his case to a *lok adalat* and come to an agreement with the builder there. Gopal Bhai knew about *lok adalat*s, mediatory procedures that had been instituted in Maharshtra as part of the state's legal aid programme. Gopal Bhai was at once crushed and furious when he told me about his failure at the Human Rights Commission. He felt that *Lok Adalat*s were only for compromises, but he did not want a compromise. He wanted to have what he considered the right of all slum dwellers: to stay on the land that they had turned into their home. 'A compromise gives me only half my right', he said.

National elections were approaching. Gopal Bhai went to the local Congress Party candidate. Gopal Bhai had always held the candidate in high regard as both a movie star and a person, and had once joined the Shiv Sena only for instrumental reasons. His heart, he had always said, was with the Congress Party. The Congress candidate arranged a contact to another builder, one close to his own party. After some negotiations, the Congress builder took over the contract with the residents of the slum. They in turn all voted for the Congress Party in the elections, and the Congress candidate won the election – for the first time after many years of Shiv Sena domination – and Gopal Bhai and his fellow residents now live in small apartments of 225 square feet next to a big shopping mall-cum-office-building complex.

For Gopal Bhai, patronage worked better than law. So was the rumour just a rumour? In many ways it was, but in others this rumour expressed and furthered a normative process: it gave a name to hopes; it made specific vague ideas of entitlements and the grounds on which they were based, namely having made a living in the city and contributing to it (cf. Das 2011; Holston 2011). In a way it turned hope into an expectation. Legal naming (Felstiner *et al.* 1980/1981) is not necessarily a misnomer, but is part of the iterative process of *juris genesis*. Thus, law is used not only for 'winning' but also for expressing certain values (Hirsch and

Lazarus-Black 1994: 16) and shaping them; legal norms are invoked in a normative manner. This is the case even where the chances of winning are slim, and where the reference to law has a predominantly symbolic nature, affirming certain values against prevailing practices that run counter to them. Changes might be small. They consist mainly in slow and sometimes contradictory changes of the norms of what is 'normal'. These norms influence how practices are evaluated and reacted to as acceptable or condemnable. These slow and small transformations in the ideas about the normal, that which is to be expected normatively as the right way of doing things, can in their cumulation add up to a more profound transformation of standards, of ideas of the good and proper order of things. The political directions that such transformations take are contingent.

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CHAPTER 7

PUBLIC INTEREST AND PRIVATE COMPROMISES: THE POLITICS OF ENVIRONMENTAL NEGOTIATION IN DELHI, INDIA

Amita Baviskar

INTRODUCTION

Public interest litigation (PIL) came into prominence in Indian jurisprudence in the 1970s as a means of addressing outstanding violations of fundamental rights guaranteed by the Indian Constitution. From being a tool for assisting vulnerable individuals and social groups in gaining access to justice, PIL has, since the late 1990s, been transformed into a far more complex device that shapes subjectivities as well as state practices across the spectrum of social activism. This essay argues that the changed meanings and effects engendered by PIL reflect larger shifts in Indian politics and society since the onset of economic liberalisation in the early 1990s. In particular, they signify that the formation of a judicial public sphere based on science and law, when embedded within the political economy of emerging urban land markets and labour deregulation and a discourse of 'world-class cities', is fraught with contradictions that undermine its original progressive intent.

This essay examines the use of public interest litigation by 'bourgeois environmentalists' in Delhi, who have deployed it to get the upper-level courts (Supreme Court and High Courts) to shut down factories and remove squatter settlements in the name of cleaning the city of pollution. These judicial orders, which have had severe and adverse impacts on workers' ability to find livelihoods and shelter in Delhi, have superseded the governmental realms of the executive and the legislature, and have short-circuited the processes of political negotiation that occur between workers, political representatives and government officials. How did the

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CAMBRIDGE
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Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9781107014664

First published 2012

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data
Law against the state : ethnographic forays into law's transformations / [edited by] Julia Eckert,
Brian Donahoe, Christian Strümpell, Zerrin Özlem Biner.
pages cm. – (Cambridge studies in law and society)
Includes bibliographical references and index.
ISBN 978-1-107-01466-4 (hardback)
1. Public interest law–Developing countries. 2. Ethnological jurisprudence–Developing countries. 3. Law and economic development. 4. Government litigation–Developing countries. 5. Law–Political aspects–Developing countries. 6. Indigenous peoples–Legal status, laws, etc.–Developing countries. I. Eckert, Julia M. II. Donahoe, Brian.
III. Strümpell, Christian, 1972–
K564.P83L39 2012
344.009172'4–dc23
2012002121

ISBN 978-1-107-01466-4 Hardback

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